

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



July-September 2000

OPINIONS

COUNTIES

Question: Does Harford County retain its ownership of the academic building at the Higher Education Applied Technology (HEAT) Center, or has its interest has been conveyed to the Harford Community College?

Answer: The County owns the academic building.

*Opinion No. 00-021
August 30, 2000*

CRIMINAL LAW

Question: Part of the State firearms law makes it a crime for a person who has previously been convicted of a “crime of violence” to possess a firearm. The term “crime of violence” is defined in Article 27, §441(e), which lists several categories of offenses.

1. Does a conviction for assault or battery under common law fall within the category of “assault in the first or second degree” as set forth in §441(e)(3)?

2. What offenses are included in §441(e)(17), which refers to “assault with intent to commit any of the aforesaid offenses or any offense punishable by imprisonment for more than 1 year”? Should the second clause of that category be construed to include as a “crime of violence” any offense for which a defendant could receive more than one year imprisonment, regardless of whether it involved an assault?

conviction for common law assault or common law battery is included in §441(e)(3).

2. The definition of “crime of violence” in §441(e)(17) includes *assault with* intent to commit any offense punishable by imprisonment for more than 1 year. It does not encompass all offenses that carry a potential penalty in excess of one year imprisonment.

*Opinion No. 00-024
September 28, 2000*

ELECTIONS

Question: Does a legislative district that is intersected by navigable water satisfy the constitutional requirement of contiguity) *i.e.*, that the district consist of adjoining territory) when no bridge, tunnel, or ferry connects the land on either side of the water?

Answer: In general, contiguity is not interrupted by navigable water, regardless of whether the water is spanned by a bridge or tunnel or is crossed by a ferry. However, in light of the legislative history of this provision, a district that crossed the Chesapeake Bay to include portions of its western and eastern shores could be subject to challenge.

*Opinion No. 00-016
July 10, 2000*

HEALTH OCCUPATIONS

Question: 1. May a business entity) such as a limited liability company or a corporation) provide physical therapy services by contracting with a licensed physical therapist to treat customers?

2. If a corporation may operate such a business, must the corporation be organized as a professional corporation, in which ownership is restricted to licensed persons?

Answer: 1. An unlicensed individual or a business entity that is owned by unlicensed individuals may operate a physical therapy business by contracting with a licensed physical therapist or licensed physical therapist assistant to provide services to its customers.

2. While a business that provides physical therapy services may be organized as a corporation, it may not be organized as a professional corporation even if the owners of the entity are licensed.

*Opinion No. 00-022
August 30, 2000*

JUVENILE CAUSES

Question: Annotated Code of Maryland, Courts & Judicial Proceedings Article, §3-828(a) requires that certain police records of juveniles remain confidential. Does that provision prohibit the disclosure of information concerning a child in a police motor vehicle accident report, even when no charges are brought or contemplated against the child?

Answer: CJ §3-828(a) applies only to police records concerning a matter that could bring the child within the jurisdiction of the juvenile court. Thus, the statute does not ordinarily prohibit disclosure of a police record in which a child is simply identified as a victim or witness of a motor vehicle accident. Moreover, because many traffic offenses involving juveniles are not within the jurisdiction of the juvenile court, reports

concerning those offenses are not confidential under CJ §3-828. If no charges within the jurisdiction of the juvenile court are brought or contemplated, the statute does not prohibit disclosure of a police report.

*Opinion No. 00-023
September 1, 2000*

LANDLORD AND TENANT

Question: Does the District Court have jurisdiction over eviction actions brought by a cooperative housing corporation against its member tenants, who occupy housing units under renewable 99-year leases?

Answer: Yes. However, a defendant would have the right to remove the action to circuit court for a jury trial if the defendant's property interest in the unit exceeded \$10,000.

*Opinion No. 00-025
September 29, 2000*

MUNICIPALITIES

Question: May an Ocean City police officer serve as a member of the Ocean City Council?

Answer: Although a police officer may seek election to the Council while remaining on the police force, the common law doctrine of incompatible positions precludes simultaneous service as a Council member and police officer in Ocean City.

*Opinion No. 00-019
August 4, 2000*

STADIUM AUTHORITY

An uncodified section of the 1998 capital budget bill authorizes the Maryland Stadium Authority to perform construction and related work for other State agencies and local governments.

1Q: Is the language in the 1998 capital budget bill sufficient to give the Stadium Authority continuing authority to design and construct facilities for State agencies and local governments?

A: The 1998 legislation validly grants the Stadium Authority continuing authorization to enter into agreements to perform construction and related work for State agencies or local governments. However, to comply with directory language in the State Constitution, the Legislature should codify such authority as part of the Stadium Authority's enabling act in the Annotated Code of Maryland.

2Q: Must the Stadium Authority obtain the approval of the Board of Public Works before it undertakes a project on behalf of another State agency or a local government, if that project will use State funds?

A: Neither the 1998 legislation, the Stadium Authority's enabling act, nor the State procurement law requires the Stadium Authority to obtain Board approval before entering into an agreement to perform construction or related work for another State agency or local government. In the context of a particular agreement, the other agency may be obliged to obtain the Board's approval.

3Q: Has the General Assembly in the 1998 legislation "inadvertently usurped the prerogatives of the Executive Branch" by assigning approval authority to standing legislative committees with respect to the design and construction of capital projects by the Stadium Authority?

A: Because the 1998 legislation affords the legislative budget committees only advance notice and an opportunity to comment on the Stadium Authority's proposed agreements and does not purport to grant the committees approval authority,

that legislation does not offend the constitutional separation of powers.

4Q: May the Board prevent the Stadium Authority from entering into a contract "even if the two legislative budget committees have given their affirmative approval" to the contract?

A: If Board approval is required for a particular contract, the Board has discretion to reject that contract, regardless of whether the legislative committees have commented favorably on the proposed agreement.

*Opinion No. 00-017
July 19, 2000*

VEHICLE LAWS

Question: Does the Maryland Vehicle Law prohibit a person from driving a taxicab while not wearing a seat belt?

Answer: State law requiring the use of seat belts does not extend to the driver of a taxicab.

*Opinion No. 00-018
July 31, 2000*

WIRETAP AND ELECTRONIC SURVEILLANCE

Question: Video and audio recording equipment have been installed in police cars in Montgomery County. Under Police Department policy, prior to making an audio recording, an officer must either obtain a person's consent or give the person notice of the recording pursuant a special traffic stop provision of the wiretap law. If an officer inadvertently records the audio portion of a videotaped conversation with an individual without that individual's consent, could the officer be charged with a violation of the State Wiretap Act?

Answer: An officer who follows the Police Department policy for recording the audio portion

of a videotaped encounter with a citizen would be in compliance with the State Wiretap Act. An officer who inadvertently makes a recording would not violate the Act.

*Opinion No. 00-020
August 11, 2000*

ADVICE LETTERS

AGENCY DOCUMENTS ON-LINE

Question: Is the Division of State Documents required to place on-line those documents that are incorporated by reference into the Code of Maryland Regulations (COMAR) without any charge to the affected agency?

Answer: No. State Government Article §7-206.2 requires the Division of State Documents to provide the public with direct, on-line access to COMAR. But that requirement does not eliminate the distinction between regulations actually published and material “deemed” published, such as documents incorporated by reference. Under SG §7-207(a) the Division has broad discretion whether and how to incorporate documents into COMAR. Moreover, the legislative fiscal note suggests that the General Assembly did not contemplate that SG §7-206.2 would require the Division to bear potentially large costs of placing incorporated documents on-line.

*Letter to
Robert J. Colborn
July 24, 2000*

CONSUMER PRIVACY ON-LINE

1Q: To what extent does Maryland law protect the privacy of a consumer’s on-line purchases?

A: No Maryland law specifically protects the privacy of a consumer’s on-line purchases. However, Internet sales are likely subject to the same restrictions as other sales. For example, Commercial Law Article §14-1402 bars unauthorized possession or disclosure of a credit card number or other payment device number. Similarly, Article 27, §583, which prohibits the publication of information concerning sales or rentals of video tapes, could also apply to Internet sales.

2Q. What level of activity must an on-line business have in Maryland in order for such a law to be enforced against it?

A: Most companies that offer on-line purchases would have sufficient contacts with the State to allow criminal enforcement and private civil actions to be brought against them in Maryland.

*Letter to
Delegate Samuel I. Rosenberg
September 14, 2000*

INSURANCE

Question: Does insurance law govern “third party” service contracts, as distinguished from service contracts issued by a retailer or manufacturer of the product covered by the contract?

Answer: Many service contracts satisfy the definition of an insurance contract. However, a warranty provided by a seller is not an insurance contract. Certain maintenance contracts would also not come within that definition.

*Letter to
Senator John Astle
July 27, 2000*

LEGISLATOR RECORDS

Question: How does the decision of the Court of Appeals in the *Washington Post* case, which applied the Public Information Act to telephone and scheduling records of the Governor, affect disclosure of legislator records?

Answer: 1. Bills or records of telephone calls made by a legislator and members of the legislator's family from their "personal telephones" in the family's private home or from personal cell phones, are not "public records."

2. Records of personal calls made from a State office location or a State-funded cell phone are public records because, as the Court of Appeals reasoned, "[t]he taxpayers and citizens of Maryland, as the employers of state officials and employees, have a legitimate interest in the frequency and length of personal telephone calls made on state office phones." However, ordinarily all that would have to be disclosed would be "the aggregated totals of time spent and charges incurred on calls devoted to personal business versus public business." The opinion offers no guidance on how one determines the difference between a business and a personal call.

3. If all that is requested is the legislator's records, details concerning calls by other persons from the legislator's phone may be withheld.

4. In light of the express prohibition in State Government Article, §10-617(e) on disclosure of state employees' home telephone numbers, the Court said that such information could be redacted from requested records.

5. Telephone billing records and scheduling records are not exempt from disclosure as "an interagency or intra-agency letter or memorandum."

6. In passing, the Court concluded that members of the Legislature have a "deliberative process" privilege with respect to their public records. Call detail impacting the deliberative process) for example, disclosures regarding calls with persons who were given assurances of confidentiality, even concerning the fact of a telephone call) could be kept confidential.

7. The Court did not discuss whether disclosure of some of a legislator's telephone

records could be barred by the constitutional Speech and Debate Clause privilege.

*Memo to
Senator Thomas V. Mike Miller
Delegate Casper R. Taylor, Jr.
September 29, 2000*

LOBBYIST ETHICS

1Q: Would legislation that allowed the suspension or revocation of a lobbyist's registration as a result of misdeeds pass constitutional muster?

A: Suspension or revocation of a lobbyist's registration for a specified period for offenses related to lobbying activities would not violate the First Amendment, particularly if the penalty were for serious and clearly delineated offenses, its imposition were accompanied by procedural safeguards, and reinstatement standards were not tantamount to a standardless licensing scheme. A permanent revocation would be more problematic, but might be permissible if limited to offenses that would permanently disqualify a person from holding elective office and were related to the person's conduct as a lobbyist.

2Q: May the Legislature prohibit compensated lobbyists from making individual political contributions to members of the General Assembly and to candidates for other statewide constitutional offices?

A: A prohibition against lobbyist contributions to legislators would probably not violate the First Amendment, although the authorities are not unanimous on this issue. Extension of such a ban to other State constitutional offices is also constitutionally defensible.

*Letter to
Donald B. Robertson
July 20, 2000*

OPEN MEETINGS

1Q: Does the Open Meetings Law apply to the Frederick County delegation of State legislators?

A: The Open Meetings Law may apply to county delegations, as joint meetings of select committees of the Legislature. However, after the session, select committees cease to have any formal existence, and thus the delegation would no longer be a “public body” under the Act.

2Q. If a meeting of the county delegation can lawfully be closed, could the delegation chair call such a meeting without a vote, or against the vote of a majority of a quorum of the delegation members?

A. Whether a delegation meeting is open or closed, if the delegation has not set a meeting time, the chair can call a meeting without a vote. Although such a meeting might be convened over the objection of a majority of a quorum, a majority of a quorum could adjourn the meeting.

*Letter to
Senator Timothy R. Ferguson
August 1, 2000*

Question: Is the Maryland-Virginia Joint Legislative Commission on Regional Transportation subject to Maryland’s Open Meetings Act?

Answer: No. The Commission was not created by any of the methods listed in the Open Meetings Act and therefore is not a “public body” subject to the law.

*Letter to
Senator Jennie M. Forehand
Delegate John Adams Hurson
September 25, 2000*

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